

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES,

Plaintiff,

v.

No. 22-cr-01322-JCH

ADAM MANN,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Adam Mann moves to dismiss his felon-in-possession charge because he argues that 18 U.S.C. § 922(g)(1) violates his Second Amendment rights. *See Motion to Dismiss* (ECF No. 52). Because Tenth Circuit caselaw foreclosing this argument survives *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022), the Court will deny this motion.

I. Background

In 2007, Mr. Mann pled guilty of possession with intent to distribute five grams or more of crack cocaine, violating 21 U.S.C. § 841(a)(1), (b)(1)(B); possessing a firearm while being an unlawful user of or addicted to any controlled substance, violating 18 U.S.C. § 922(g)(3); and carrying a firearm during and in relation to a drug-trafficking crime, violating 18 U.S.C. § 924(c)(1)(A)(i). *See* Compl. ¶ 5 (ECF No. 1); *see also* Plea Agreement ¶ 3, *United States v. Mann*, No. 07-cr-00385-LH (D.N.M. Nov. 1, 2007) (ECF No. 31).

In 2009, Mr. Mann pled guilty to trafficking a controlled substance by possessing cocaine with intent to distribute, violating N.M. Stat. Ann. § 30-31-20(A)(3)(b) (2006). *See* ECF No. 1, ¶ 5; *see also* Guilty Plea, *State v. Mann*, No. D-202-cr-2007-01766 (2d Jud. Dist. Ct. July 6, 2009).

II. Analysis

18 U.S.C. § 922(g)(1) prohibits anyone “who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year” from “possess[ing] in or affecting commerce, any firearm or ammunition.”

In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment confers an “individual right to possess and carry weapons in case of confrontation.” 554 U.S. 570, 592 (2008). Relevant here, *Heller* cautioned in dicta, “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” *Id.* at 627.

The Tenth Circuit has held that *Heller*’s dictum is binding and that § 922(g)(1) is constitutional. *See United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009); *accord United States v. Griffith*, 928 F.3d 855, 871 (10th Cir. 2019); *United States v. Molina*, 484 F. App’x 276, 285 (10th Cir. 2012); *see also United States v. Gieswein*, 887 F.3d 1054, 1064 n.6 (10th Cir. 2018) (noting that *McCane* foreclosed constitutional challenges to § 922(g)(1)); *In re United States*, 578 F.3d 1195, 1200 (10th Cir. 2009) (unpublished) (recognizing that Tenth Circuit has foreclosed as-applied challenges to § 922(g)(1)).

In *New York State Rifle & Pistol Ass’n v. Bruen*, the Supreme Court clarified the standard for applying the Second Amendment and reviewing firearm regulations. *See* 142 S. Ct. 2111, 2129 (2022). First, a court should ask whether “the Second Amendment’s plain text covers an individual’s conduct.” *Id.* at 2129-30. If so, then “the Constitution presumptively protects that conduct,” and “the government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2130. The reviewing court will then uphold the regulation only if the government meets its burden. *See id.*

After *Bruen*, the Tenth Circuit's district courts disagreed about whether the Circuit's earlier decisions upholding § 922(g)(1) remained good law. Mr. Mann filed his motion in this context. But after Mr. Mann filed his motion, the Tenth Circuit clarified that its earlier decisions survived *Bruen* and continue to bind its district courts. See *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023). Thus, under *McCane*, Mr. Mann's challenge to § 922(g)(1) fails. See 573 F.3d at 1047.

III. Conclusion

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Mr. Mann's *Motion to Dismiss* (ECF No. 52) is **DENIED**.



SENIOR UNITED STATES DISTRICT JUDGE